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Effort to Curb Spy Agencies Turns Into a Permission List

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What started life as an administration code to curb the misdeeds of the intelligence agencies is evolving into a license for wide-ranging secret activity at home and abroad.

This conclusion emerges from interviews with officials responsible for designing a new charter primarily to govern the conduct of the Central Intelligence Agency but also the FBI.

Their draft, still incomplete, is less a code of "Thou Shalt Nots" than a prescription for "Thou Mayest—Provided . . ."

Among other things, the agencies would be allowed to infiltrate domestic political and business organizations and spy on law-abiding Americans abroad. Unlike a proposed Senate bill, the agencies would not be barred specifically from overthrowing a democratic foreign government or employing torture.

As things now stand, the only specific prohibitions would block agencies from planting their people in domestic news-gathering and religious organizations; from using infiltrators to provoke political organizations into illegal acts or influencing the policies

of corporations; and from assassinating foreign leaders.

The draft, however, does not give the CIA or FBI carte blanche in other fields. Typically, the agencies would have to get presidential approval or a court order or both before engaging in the most controversial actions.

"The substantive battle" over the code's provisions "is far from over," insisted one aide whose boss, in the past, has been concerned with abuses by the CIA and FBI. But even this official acknowledged that "the code is being written to authorize what you can do."

"It has to be cast in those terms," this aide said. "The agencies need instruction. They have morale problems."

The draft must still be approved by a Cabinet-level committee and President Carter before it is sent to Capitol Hill to be enacted into law. Aides think this could happen in three to five weeks.

The administration's "Can Do" code reflects a striking shift in opinion towards the CIA and the FBI. Three years ago, both were on the defensive, exposed as violators of citizens' rights, at home and abroad. The demand for

reform shaped by civil libertarians seemed irresistible.

Now, the CIA and FBI are among the staunchest supporters of the proposed code. They see it as a mechanism to legitimize conduct for which they have been sharply criticized.

At a meeting of alumni from schools of international relations here the other night, Adm. Stansfield Turner, the CIA director, spoke of the need for a charter and left his listeners with the impression that he saw it as blessing the CIA's works.

A new and more conservative Congress has played its part in the thinking of the drafters. Interest in reform has fallen so low that the House Intelligence Committee can't get members to meetings. Another measure of the shift was provided by Rep. Les Aspin (D-Wis.), chairman of the Intelligence subcommittee on oversight. A leading liberal, he publicly praised the CIA for what he saw as its prescient reporting of the Vietnam-China conflict.

In the past, the FBI's planting of agents in domestic groups touched off a great outcry. But the proposed code would continue these practices, although under some procedural limits.

The FBI would be allowed to infiltrate at will an outfit strongly linked to a foreign power and with foreign citizens composing most of its membership. An organization with questionable links to a foreign power — the Socialist Workers Party is cited as an example — could be infiltrated if there was no other means of obtaining information and if an official certified that that the information sought was important.

If such an outfit is to be bugged, wiretapped or have its mail opened, the agency would need a court order and must assert that the information wanted is "essential to national security."

In the same way, agents could be planted in U.S. business firms or corporations, either to hide their identity or to gain information. Again, a court order would be necessary for "intrusive" spying.

Neither the CIA nor the FBI would be allowed to penetrate domestic news-gathering concerns or religious bodies, practices frequently used by the CIA in the past. The drafters are still debating whether foreign stringers or part-time correspondents abroad are fair game for CIA recruitment.

After heated debate, the drafters have tentatively agreed to allow the CIA to spy on law-abiding Americans abroad. But if the surveillance is "intrusive" — opening mail, tapping telephones, bugging rooms and the like — a court order will be required.

In contrast, the Senate bill would outlaw a lengthy list of controversial acts by the CIA. In addition to banning the overthrow of democratic governments and of torture, the list of "shalt nots" includes creating shortages of food and water, starting an epidemic or flood, helping foreign police or soldiers to violate human rights, and more.

Of the Senate list, only the ban on assassination survives in the draft. Instead administration officials would rely on "procedural safeguards."

Every covert project would be examined by a Cabinet-level committee of the National Security Council. Its recommendation would be approved, in turn, by the president only if he found the action was necessary for U.S. security. The proposed scheme would then be disclosed in secret to the two congressional intelligence committees and the six Hill committees dealing with foreign affairs, defense and appropriations.

When the administration bill finally sees the light of day, it could spark an angry outburst from civil libertarians. But it will almost surely draw fire as well from hard-line supporters of the spy agencies who argue the CIA and FBI should have the freest possible hand. The two forces may neutralize each other and thereby permit the measure's passage.